

RESPONSE TO NON-COMPLAINT AMENDMENT
U.S. Application No. 10/540,394 (Q101062)

REMARKS

At page 3 of the Communication, the Examiner indicates that the Amendment filed January 31, 2008, is non-responsive, alleging that the Amendment amends all outstanding claims to non-elected subject matter and therefore the amended claims now recite subject matter that lacks a unity of invention with the elected invention. The Examiner supports this allegation by arguing that changes to the amino acids sequence of SEQ ID NO:1 over residues 384-389 (from the amino acid sequence MVHRDP to the amino acid sequence WYTVTH) results in an antibody that no longer specifically binds the antigen comprising the original amino acid sequence of SEQ ID NO:1 and thus cannot possibly share the same special technical feature as Applicants' elected invention.

In response, Applicants note that the change made in the sequence listing does not alter the claimed antibody so as to render the antibody incapable of specifically binding to the antigen comprising the original amino acid sequence of SEQ ID NO:1 and that the Examiner has provided no evidence to support the allegation. Accordingly, the Amendment should be entered, and the lack of unity allegation is improper because the claimed subject matter shares the same special technical feature as the elected invention.

The Examiner also states that the typographical errors the Applicants seek to correct are allegedly not obvious errors. In this regard, Applicants note that, consistent with Applicants' position in the telephonic interview referred to by the Examiner, SEQ ID NO:1 was intended to have the same amino acid sequence disclosed by GenBankTM Accession No. XM_044533 based on the disclosure bridging pages 72 and 73 that “[t]he amino acid sequence (SEQ ID NO:1) encoded by the base sequence represented by SEQ ID NO:2 completely coincided with

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SEMA4B protein encoded by SEMA4B gene (GenBank Accession No. XM_044533 gene)". It is noted that the Examiner did not challenge this position during the interview. Further, the Examiner's understanding of the plain meaning of "coincide" is incorrect in light of Applicants' position that the Applicants' intended SEQ ID NO:1 to have the same amino acid sequence as that which is disclosed by GenBankTM Accession No. XM_044533. Thus, the Examiner's interpretation of Applicants' reference to the term "SEMA4B gene" lacks support and is not logical in light of the teachings in the specification.

The Examiner asserts that an improper incorporation by reference was made by Applicants (i.e., incorporation of the disclosure set forth under GenBankTM Accession No. XM 044533). The Examiner recommends curing this alleged defect by submitting a declaration executed by Applicants stating that the amended sequence consists of the same sequence in the reference. Applicants note that the law is that it is not necessary to submit a declaration on these facts. Thus, the Examiner's request is improper because no declaration is necessary. However, solely to advance prosecution of the present application, Applicants submit herewith a Declaration stating that the amended sequence consists of the same sequence in the reference.

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Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The U.S. Patent and Trademark Office is hereby directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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